

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6611 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LEGAL HEIR AND REPRESENTATIVE OF NATHUBHAI MAVJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN SONI for Petitioner

MR. D.P. JOSHI A.G.P. for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/11/98

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. Joshi, learned Assistant Government Pleader for the Respondent Authorities. On the facts and in the circumstances of the case, the matter is taken up for final hearing today. The petitioner being the owner of the land survey No. 273, 274 and 275 of Rajkot filed necessary Forms under section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act"). They

have also applied for exemption under section 21 of the ULC Act. The exemption was granted by the concerned authority for making construction of the residential units for weaker sections of the society. The scheme in that respect came to be approved with certain conditions on 14th May, 1980. The construction of the units was accordingly required to be completed within the period of five years. However, show cause notice came to be issued by the second respondent for cancelling the exemption on 29th September, 1981. It is the case of the petitioner that the show cause notice was not received. However, the second respondent cancelled the exemption and the permission under section 21 of the ULC Act by order dated 22nd November, 1982. The matter was carried in appeal being Appeal No. Appeal/UL/Rajkot/133/82 before the Additional Urban Land Tribunal and Ex-Officio Secretary to the Government Ahmedabad under section 33 of the ULC Act. That appeal was dismissed on 10th December, 1985. The petitioner, therefore, filed special civil application No. 1193 of 1986 before this Court challenging the aforesaid order of cancellation of scheme and exemption and dismissal of the appeal by the appellate authority. By decision dated 24th February, 1994, (Coram:A.N.Divecha,J. as he then was), writ petition was allowed as per the following order:

"In the result, all these petitions are accepted.

The impugned order passed by the Competent Authority under section 21 (2) of the Act as affirmed in appeal by the appellate order under challenge in each petition is quashed and set aside. Each petitioner is permitted to carry on the construction activity after complying with all the necessary formalities according to law on the subject matter in respect of which the permission under section 21 (1) came to be granted from the date of receipt of the writ in this case by the Competent Authority and to complete such construction within the stipulated time limit of five years beginning on and from the date of the order granting such permission after excluding the time from the date of the show cause notice for the proposed action under section 21 (2) of the Act till the writ in each case is received by the Competent Authority as aforesaid. The Registry is directed to send the writ in each case as expeditiously as possible but in any case latest by 14th March, 1994. Rule is accordingly made absolute with no order as to costs."

It appears that the matter was carried in letters patent appeal No. 928 of 1995 which was rejected on 15th July, 1998. A copy of the decision in the letters patent appeal has been sought to be placed on record. Permission to that effect is hereby granted.

It is the case of the petitioner that the petitioner applied for approval of revised plan and extension of time limit for complying with the scheme before the second respondent. However, respondent NO. 2 rejected the said application on the ground that the time limit of five years has expired.

I have heard the learned advocate appearing for the petitioner and the learned Assistant Government Pleader Mr. Joshi appearing for the respondent authorities. The facts are not in dispute. What was required to be considered by the second respondent was to go through the decisions of this Court referred to hereinabove and compute the period by excluding the time consumed in litigations as aforesaid. Instead of undertaking that exercise, the second respondent mechanically came to the conclusion that the prescribed period of five years has expired. The second respondent has, therefore, clearly committed error which in substance amounts to an error of not computing the period. Today, this Court has noted the computation of period in order to see that there may not be a mistake now committed by the second respondent. The computation so carried out with the assistance of the learned advocate for the petitioner and the learned Assistant Government Pleader comes to balance period of five years coming to an end on 31st May, 2002 for the petitioner to comply with the earlier sanctioned scheme. Following order is, therefore, passed :

The impugned order of respondent No. 2 rejecting the petitioner's application is hereby quashed and set aside and the petitioner is granted permission to comply with the scheme as sanctioned earlier on 14th May, 1980 as per the directions of this Court reproduced hereinabove on or before 31st May, 2002. Rule is made absolute in these terms with no order as to cost. Direct Service is Permitted.

11.11.1998. (M.S.Parikh,J.)

Vyas